

## Claims of Innocence in ‘Last Statements’ of Texas inmates since 1982

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An important question facing the country and the Innocence Movement is the size of the tragic wrongful conviction debacle. Of course, it was already too large when Gary Dotson was exonerated in 1989, but we still must determine how many more innocent people there actually ARE in U.S. prisons. One route to the answer is to examine the rate of exonerations as a percentage of imprisonments for similar crimes and extrapolate. From such calculations, wrongful conviction rates of up to 6% have been estimated. Another route to the answer is to determine how many inmates are actually claiming innocence, and then determine how many of those actually ARE innocent. The 2001 Rand Corporation study gave an estimate of 15% for the percentage of inmates claiming innocence.

One source of real-time data of such claims of innocence is the collection of “Last Statements” of inmates sentenced to death. Since 2009, the Texas Department of Criminal Justice has posted online the Last Statements, from 1982 onward, at [http://www.tdcj.state.tx.us/stat/dr\\_executed\\_offenders.html](http://www.tdcj.state.tx.us/stat/dr_executed_offenders.html). For this article, all of those 492 Last Statements were collected and linked online at [492 Last Statements](#). Of the 489 men and 3 women executed in Texas since the end in Texas in 1982 of the post-*Furman v. Georgia* moratorium, 50 claimed their innocence in direct language. That’s 10%+. See [50 Claims of Innocence](#). Representative examples of the direct language used in such claims are “*I’m innocent*” and “*I didn’t kill my wife.*”

Since these “Last Statements” were first posted online by the Texas Department of Criminal Justice, there have been academic studies of the language used, such as in the 2010 article “[Communication from the Condemned](#)” in *The Psychologist*, the journal of the British Psychological Society. The coverage in the media has been less analytical and has focused on the outlandish, such as the exhortation from one man about to die, “Go Cowboys,” which was a reference to the Dallas Cowboys football team. None of the studies or comments has focused exclusively on the claims of innocence.

In the law of evidence, statements from those about to die have been determined to be more credible, ostensibly because they are made by people about to meet their God and people seeking to set things right. Such legal endorsement comes in the form of an exception to the hearsay rule, and are called “deathbed statements.” As the deceased declarant cannot testify at a trial or deposition, the law permits a person who heard a “deathbed statement” to testify about the content of that statement. Normally, such hearsay about what another person said is not allowed as evidence in a court of law.

It’s not known if any Last Statements by condemned persons have ever been introduced in a trial, as exceptions to the hearsay rule. Some of them certainly have been sufficiently detailed, such as the Last Statement by William Chappell in 2002, “*If you think I did this, you need to think again. There were three people in the house and have confessed to it. Larry Ashworth in Fort Worth killed seven people.*”

Terminally ill people who are aware they are dying usually have hours and days and sometimes weeks and months to consider their last words. Sometimes they get that opportunity to say those words with friends and relatives at their bedsides, sometimes with plenty of time to spare. For the condemned on the Texas death row, there are usually several years to consider what to say, if anything. Except for the occasional delay and reprieve, and unlike the terminally ill person, the condemned inmate knows exactly when the end will come. Thus, the Last Statements of the condemned are arguably more carefully thought out. It should be noted that these condemned people were found guilty of some variation of homicide, but not of perjury. Beyond the scope of this article is an analysis of what these 50 people said to the police and, for those who testified at their own trials, what they stated under oath.

That raises the question of why such statements have not been more carefully considered as analysts try to determine the frequency of wrongful conviction, and, more seriously, wrongful execution. Of the cases where wrongful execution has been viewed as likely by commentators and analysts, two of the condemned, Cameron Todd Willingham and Leonel Torres Herrera did proclaim their innocence from their deathbeds, a.k.a. gurneys. Willingham, who was executed in 2004 for the arson/murder of his family, said, among other words, *“Yeah. The only statement I want to make is that I am an innocent man - convicted of a crime I did not commit. I have been persecuted for 12 years for something I did not do.”* Herrera was the plaintiff in the U.S. Supreme Court case of *Herrera v. Collins* where the Court infamously ruled, 6-3, in January, 1993 that the execution of the actually innocent was not barred by the prohibition on “cruel and unusual punishment” in the Eighth Amendment to the Constitution. From Herrera’s Last Statement four months later came these words, *“I am innocent, innocent, innocent. Make no mistake about this; I owe society nothing. Continue the struggle for human rights, helping those who are innocent, especially Mr. Graham. I am an innocent man, and something very wrong is taking place tonight.”*

When searching the internet for other executed Texas inmates who were likely innocent, four more men are cited most frequently: Ruben Cantu, Carlos DeLuna, Johnny Frank Garrett and Claude Jones. DeLuna and Jones said nothing about their innocence in their short Last Statements of 29 and 28 words, respectively. Cantu and Garrett made no statements at all. If any of them was actually innocent, we will never know why they didn’t state their claims in their last few minutes alive. Perhaps they knew, correctly, that such words would not help them to stay alive for more than a few minutes, and they were resigned to their fates. Perhaps they had come to believe in their own guilt. After all, a substantial number of the exonerations in this country since 1989 have come in cases where the exonerees had confessed to committing the crimes.

The most comprehensive list of the executed Texans who may have been, or likely were, innocent has been generated by the blog, [“The Skeptical Juror.”](#) The writer listed [24 names of likely innocent condemned men](#) which came from a list generated at Northwestern University, (but which list is not available for the earlier links) Of those 24, 14 were among the 50 who proclaimed their innocence in their Last Statements. Significantly, the other ten, including Carlos DeLuna, did not claim their innocence in their Last Statements. The oft-cited Cantu, Garrett and Jones cases, cited above for possible innocence, were not on the “Northwestern list.”

As more than half of the likely innocent men on the list of 24 proclaimed their innocence in their Last Statements, those statements should be given additional scrutiny and credence, but such analysis is beyond the scope of this article. Of the 14, “The Skeptical Juror” had written detailed analyses of five of their cases. Using a scale of 0-100, with 100 being complete faith in innocence, “The Skeptical Juror” found the claims of innocence of those five to be worth scores of 11, 58, 69, 84 and 90. “The Skeptical Juror” gave DeLuna, who didn’t claim innocence in his Last Statement, a score of 83. . In 2012, the [Human Rights Law Review](#) at Columbia University published an extensive article, “[Los Tocayos Carlos](#)”(The Namesake Carlos) which concluded that Carlos DeLuna was likely innocent.

Most recently, “The Skeptical Juror” expressed the view that the last person executed in Texas, Preston Hughes was innocent. See February 1, 2012 [blog article](#). Hughes was also the last of the 50 to declare his innocence in his Last Statement

Chronologically through the three decades of Last Statements, except for the first eight years, the frequency of claims of innocence seems to have held steady at slightly more than 10%. See the linked [Spreadsheet](#) of the 492. There were no claims of innocence in the 33 Last Statements in the eight tracked years of the 1980’s, and the first such claim was stated by Johnny Anderson in 1990. He said, “*I would like to point out that I have written a statement and the Warden will give you a copy. I still proclaim I am innocent, and that’s all I have to say.*” Lionel Herrera’s 1993 claim of innocence was the second. Perhaps the winds of the DNA-exoneration movement, which began in 1989, had found their way to Texas and they generated hope in subsequent years that someone might finally be listening, even if too late to prevent their own execution.

Also collected on the spreadsheet were other characteristics of the 492 Last Statements. There were 37 Last Statements with claims of reduced responsibility. If true, such statements would have diminished the state’s case for capital punishment. See [37 Claims of Reduced Responsibility](#). Representative examples of such claims were “*I never meant to hurt you,*” and “*I defended myself when I killed your family member. Prison is a bad place. There was eight against me. I didn’t set out to kill him.*” On the other side of the judicial ledger, a total of 211 (combining columns 3 and 4), or 43%, acknowledged their crimes and/or asked for forgiveness from the families of the victims.

One hundred ten (22%) had no Last Statement at all, and that doesn’t include the few who said something like, “*I have nothing to say, but....*” and then said a very few more words. One hundred sixteen (24%) expressed a faith in the hereafter, which was often welcomed as a way out of prison. One inmate noted the design similarity between his gurney with his arms stretched out. Said Jessy San Miguel in 2000, “*Ironic, isn’t it? I’m a cross.*” The clearest trend was that the references in the Last Statements to physical discomfort and decline in the last few seconds of life began appearing only in the 2000’s. Specifically, in January, 2002, Randall Hafdahl’s very last words were “*It’s on the way, I can feel it. It’s OK, baby. We have a party to go to. I can feel it now.*” The next two such statements came in 2007 and 2008, but there have been 11 in the most recent three years, 2010-2012. Perhaps this change can be correlated to changes in chemicals or procedures used in executions.

It should be no surprise that several Last Statements opposed the death penalty, but they were not tracked and quantified. Similarly, like “Red,” played by Morgan Freeman in “Shawshank Redemption,” several inmates noted that they were not the same person who originally came to Death Row. For example, Herman Clark stated in 1994, “*Specifically, I want to say that the bad evil man I was when I came to death row 13 years ago is no more.*” For some, that observation led to the view that prison was sufficient to rehabilitate, and that execution was unnecessary.

In conclusion, but beyond the scope of this article, it’s not known whether every one of the 50 claims of innocence has been carefully evaluated by prosecutors and by defense attorneys and the public. They should be. These statements should be accorded the respect that deathbed statements have been given in the past in other contexts.

Returning to the original reason for this review of the 492 Last Statements, it is significant that 50 men, or 10%, claimed innocence, and that several independent analysts have concluded that two or more of those 50 were actually innocent. Those two were Willingham and DeLuna. If those rates or percentages were applied to the gross number of two million people in U.S. jails and prisons, that would mean that it’s likely that there are 200,000 inmates who likely claim innocence, and of those, more than 8,000 actually ARE innocent. This minimum number of 8,000 compares to the 1,000+ individual exonerations which have occurred since 1989, as reported by the newly established [National Registry of Exonerations](#), created by the University of Michigan and Northwestern University Law Schools.

One significant characteristic of the 50 claims of innocence in the Last Statements is that they obviously occurred only in the most serious of serious crimes. It cannot be assumed that the percentage of claims of innocence will be similar or even close. That’s why the newly created [Registry of Claims of Innocence](#) may be useful. Hopefully, the name of every inmate in the U.S. who claims innocence will be on that list at some point, regardless of the seriousness of the crime. That will further the necessary work of sizing the overall problem which will, in turn, assist the assembly of resources to resolve it. Americans should not rest until the last innocent person is released from prison and the pipeline of such innocents into prison is stopped.